

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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WHISPERING PINES GOLF CLUB LLC,

Plaintiff-Appellant,

v

TOWNSHIP OF HAMBURG,

Defendant-Appellee.

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UNPUBLISHED  
September 16, 2003

No. 233218  
Michigan Tax Tribunal  
LC No. 00-259437

Before: Whitbeck, C.J., and White and Donofrio, JJ.

PER CURIAM.

Petitioner Whispering Pines Golf Club, LLC (Whispering Pines) appeals as of right a Tax Tribunal judgment establishing the true cash value, assessed value, and taxable values of its real property for the tax years 1998 and 1999. We conclude that the Tax Tribunal properly used and applied the income approach to valuation—including its incorporation of market factors—and fulfilled its duty to reach an independent conclusion respecting the valuation despite its reliance on the township's appraisal. We hold that the Tax Tribunal did not err in including the income from golf cart rentals in its estimate, although it erred in failing to deduct the expense of leasing the carts. But we find that the Tax Tribunal's findings respecting the number of possible weekend rounds Whispering Pines could expect, and the figures it used to represent the personal property amount, were not supported by the evidence, and must be recalculated. Therefore, we reverse and remand for further findings.

**I. Basic Facts And Procedural History**

The property at issue is an eighteen-hole golf course located in respondent Hamburg Township (the township). The golf course is situated on 177 acres, fifty-two of which are wetlands, 20 to 25 miles from US-23, the nearest main road. The course includes a 24,000-square-foot clubhouse that houses a pro shop, restaurant and banquet facilities, exercise area, and meeting rooms. The course is operated by a business entity closely related to Whispering Pines called The Nineteenth Hole.

The parties stipulated that the highest and best use of the property was as a golf course, but disagreed as to the property's true cash value. The parties submitted two competing valuation disclosures, or appraisals. Whispering Pines' appraisal was prepared by Edward Shaffran. Shaffran prepared a valuation disclosure based on a limited appraisal of the property that primarily used the income approach to determining value, and also prepared a second

valuation disclosure at the tribunal's request. Although Shaffran was a licensed appraiser when he prepared the first valuation disclosure, he decided not to renew his license in August of 1999; therefore, as Whispering Pines' counsel explained, Shaffran prepared the second valuation disclosure in his capacity as a real estate consultant.

Shaffran estimated that the annual green fees should total \$675,000, based on a fee of \$30 per round and approximately 22,500 rounds per year. These estimates were based in part on the course's historical data as well as the amount Shaffran felt the revenue could be improved by more experienced management. Although Shaffran testified that he considered the rates of other courses in reaching the \$30 figure, he did not include the names of any comparable courses in his appraisal because he felt that his own statement was sufficient. Shaffran noted that he considered Whispering Pines' mandatory cart rental policy a "major detriment" with a "profound effect" on the number of rounds played because many people, including himself, prefer to walk; however, Shaffran admitted having no statistics to support this view. Shaffran did not include the income from golf cart rentals or food and drink sales because that income was not attributable to the real estate.

Shaffran based his \$100,000 estimate of clubhouse rental on the amount of a 1999 lease for nearly that amount and taking into consideration the principle that a restaurant can afford to spend 6 to 10 percent of its revenue on rent. Shaffran reached his \$8500 estimate for the cart storage and maintenance building by calculating ten percent of its cost and he derived the pro shop's contribution to revenues by its percentage of sales.

Shaffran explained that his \$293,000 figure for direct expenses was partly derived from Whispering Pines' actual historical information and partly derived from Shaffran's knowledge of the operations of the Washtenaw Country Club through his lengthy participation on their finance and greens committees. Similarly, Shaffran testified that his \$161,500 estimate of general administrative expenses was derived "basically from the actuals," then "taking some of those actuals and looking at maybe what a Jim Dooling of Total Golf would be [sic] to operate such a facility, just based on my experience[.]" Shaffran calculated his deduction for personal property, including the maintenance and restaurant equipment, "based on the values attributable to the facility and—I think of furniture and fixtures that would be in place for an operator to achieve—again going back to the 100,000 dollar lease aspect of it, that individual would want some first-class equipment—coming up with just a round—round number that I felt was comfortable."

Shaffran included a total amount of \$230,000 in transition expenses to account for a two-year period to achieve the expected income increase expected from improved management. Shaffran explained that a professional operator considering purchasing Whispering Pines "is probably going to have to spend some money on promoting it, advertising, maybe some giveaways, . . . advertising on television, cable, local – local Chamber of Commerce, things like that. I think someone would have to be pretty aggressive. Obviously that doesn't come for free. So attributing \$80,000, I don't think, is an unheard-of number." Shaffran estimated that \$625,000 should be deducted for personal property. From these calculations, Shaffran reached a fair-market-value estimate of \$1,262,000.

Shaffran also calculated the fair market value using the cost approach and deriving figures based on actual historical data as well as his personal experience, which resulted in a figure of approximately \$2,400,000. However, Shaffran did not calculate the fair market value

using the market approach on the ground that it was “not applicable at all” because “no two golf courses are alike.”

Walter Schmidt, a real estate appraiser with twenty-eight years of experience, testified for the township that his review of Whispering Pines’ appraisal indicated that Shaffran’s value was too low, and that Shaffran should have conducted a full rather than a limited appraisal. Further, Schmidt’s experience, which included six golf course appraisals, indicated that the typical number of rounds played annually ranged between 17,000 and 39,000, and he therefore felt that Shaffran’s 22,500 estimate was too low, as was his \$30 fee estimate.

With respect to Shaffran’s cost analysis, Schmidt testified that it was “absolutely not” properly done because there was “no support for anything” and Schmidt could not determine how Shaffran reached his result. Schmidt also questioned Shaffran’s reference to “functional depreciation based on a purchase price,” a term with which Schmidt was unfamiliar, and speculated that this figure may have been a mechanism for “double-dipping,” or improperly deducting certain items twice. Schmidt explained that “functional depreciation” generally refers to factors inside the property lines that negatively affect the golf course’s value. Schmidt indicated that inclusion of golf cart rental income was appropriate when determining fair market value of a golf course because golf cart rentals were necessary to the course’s operation.

Susan Murray, the Hamburg Township assessor, prepared a full appraisal for the township. Murray described how she determined the cost of the golf course and its various components by reference to the State Tax Commission manual, and concluded that a conservative value for the course would be \$1,394,301. Murray analyzed six comparable golf courses in the same county to arrive at her land value of \$6,000 per acre, and explained that she chose a lower value for Whispering Pines than any of the comparable courses “[t]o be as conservative as possible.”

With respect to the personal property, Murray testified that she had mistakenly listed her estimates as the assessed value rather than the true cash value. Moreover, she felt that her estimates of true cash value were incorrect in light of the personal property statements Whispering Pines submitted at the hearing. Murray therefore revised her estimates of true cash value of the personal property to \$505,612 for 1998 and \$414,893 for 1999, the amounts listed on Whispering Pines’ personal property statements.

Murray described each of the six recently sold comparable courses she evaluated to arrive at a value estimate based on the market approach. She first averaged the weekend rates to the daily rates and multiplied that percentage by the sale to arrive at an adjustment amount, then made quality adjustments to each comparable course to account for the differences in course quality. Murray also made an adjustment based on the square footage of each course’s clubhouse. Murray then calculated the average sales price per hole using the adjusted values to arrive at a figure of \$228,000 per hole or \$4,104,000 total for 1998, and then multiplied this amount by the consumer price index to calculate the 1999 total. Although the average annual number of rounds played at the comparable courses was over 40,000, Murray estimated that Whispering Pines could average 31,500 based on a comparison to the course that had the most closely comparable location. Murray used figures of \$39 and \$49 for green fees for weekday and weekend rates, respectively, which reflect the fees charged at the most similar of the comparable courses Murray surveyed.

Murray relied on the figures for actual, general, and administrative expenses listed in Whispering Pines' income statement, although she noted that these figures varied greatly from the expenses shown in Whispering Pines' submitted appraisal. On cross-examination, Murray indicated that she did not include the expense of leasing the golf carts in this calculation. Murray used the figure for reserves in Whispering Pines' appraisal and she added that based on other appraisals she had read, this figure was fairly standard. After subtracting the expenses from the income and dividing that figure by the capitalization rate, Murray arrived at a value of \$3,524,731. For her final reconciled value of \$3,792,600, she took a value that was "slightly higher than the cost but lower than the market value" because that amount was "best supported" and "fairly conservative." Murray explained that she thought the actual income was too low and the expenses were too high due to mismanagement.

The Tax Tribunal concluded that the income approach was the most appropriate method by which to value the property, although it relied on the market and cost approaches "for correlation purposes." The Tax Tribunal further concluded that the income earned from golf cart rentals was properly included under the income approach to valuating the property, and that personal property should be deducted from the capitalized income. Finding that Shaffran's appraisal was insufficiently documented, inadequate, and unreliable, the Tax Tribunal concluded that Whispering Pines had failed to carry its burden of establishing the true cash value of the property. The Tax Tribunal noted that although Shaffran's appraisal was based in part on market observations, the appraisal did not list the source of the market information from which the green fee estimate was derived. The Tax Tribunal found that the credibility of the appraisal was undermined by the fact that Shaffran's deductions of \$625,000 in personal property and \$230,000 in transitional use from the capitalized income exceeded the gross income of \$675,000. Moreover, Shaffran's appraisal did not include a valuation disclosure for the value of the personal property and, although Shaffran deducted the value of the golf carts from the real property's value, the appraisal did not include the income derived from golf cart rentals.

The Tax Tribunal found that the township's contention of true cash value was supported by a well-prepared, fully documented appraisal, and it therefore based its opinion on that appraisal and Murray's supporting testimony. The Tax Tribunal concluded that Murray properly included income from golf cart rentals in her appraisal. The Tax Tribunal set the value of the personal property at \$218,400 for 1998 and \$207,400 for 1999. This amount reflected Murray's erroneous listing of the *assessed* value rather than the *true cash* value, and did not reflect the change Murray made at the hearing in light of the personal property statement Whispering Pines submitted. However, the Tax Tribunal gave Murray's corrected and rounded figures of \$505,600 and \$518,600 elsewhere in the opinion.

The Tax Tribunal accepted Murray's values using the cost approach, and also approved Murray's method of adjusting Whispering Pines' gross income and actual expenses to incorporate an assumption of prudent management, noting that the appraisal included details about the comparable courses such as total acreage, United States Golf Association slope rating, yards from the longest tee, par, number of holes, and sale information.

The Tax Tribunal approved Murray's conclusion that Whispering Pines' expenses totaled \$981,414, leaving a net operating income of \$511,086. The Tax Tribunal then capitalized this amount at a rate of 14.5 percent, which both parties agreed was the correct figure. According to figures given in the Tax Tribunal's opinion, this calculation resulted in a value rounded to

\$3,750,000 for 1998 and \$4,602,600 for 1999, from which the Tax Tribunal respectively subtracted \$218,400 and \$207,400 as the value of the personal property, resulting in final figures of \$3,531,600 for 1998 and \$3,602,600 for 1999.

These figures appear to have been erroneously calculated using Murray's *cost* results rather than her *income* results, as the Tax Tribunal intended: \$511,086 capitalized at 14.5 percent actually results in a figure of \$3,524,731, which comports with Murray's calculation. Moreover, the origin of the \$4,602,600 figure is unclear, and it is obviously not the figure the Tax Tribunal used to arrive at its 1999 valuation conclusion. Working backward and adding the 1999 personal property value of \$207,400 to the Tax Tribunal's asserted income-based land value of \$3,602,600 results in a figure of \$3,810,000, which comports with Murray's 1999 cost-based estimates. It appears that the Tax Tribunal inadvertently used the cost-approach figures from the summary page of Murray's appraisal, where they appear directly above the income-approach figures the Tax Tribunal intended to use.

## II. Establishing The True Cash Value

### A. Standard Of Review

In the absence of fraud, our review of a Tax Tribunal's legal determinations "is limited to determining whether the tribunal erred in applying the law or adopted a wrong principle[.]"<sup>1</sup>

### B. Methods Of Valuation

The Michigan Constitution provides that real property is to be taxed on the basis of its true cash value.<sup>2</sup> The Michigan Legislature has defined "true cash value" as "the usual selling price at the place where the property to which the term is applied is at the time of assessment, being the price that could be obtained for the property at private sale, and not at auction sale except as otherwise provided in this section, or at forced sale."<sup>3</sup>

Michigan courts have recognized three acceptable methods to establish the true cash value of real property: the market approach, the reproduction-cost-less-depreciation or "cost" approach, and the capitalization-of-income or "income" approach.<sup>4</sup> Under the market approach, "[t]he market value of a given property is estimated by comparison with similar properties which have recently been sold or offered for sale in the open market."<sup>5</sup> Under the cost approach, the land itself is valued as if it were unimproved, then the value of any improvements is established separately by calculating what the improvements would cost to construct new and deducting an appropriate amount for depreciation.<sup>6</sup> Under the income approach, the value of a property is

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<sup>1</sup> *Michigan Bell Telephone Co v Treasury Dep't*, 445 Mich 470, 476; 518 NW2d 808 (1994).

<sup>2</sup> See Const 1963, art 9, § 3.

<sup>3</sup> MCL 211.27.

<sup>4</sup> See *Antisdale v Galesburg*, 420 Mich 265, 276; 362 NW2d 632 (1984).

<sup>5</sup> *Id.* at 276 n 1, quoting 1 State Tax Comm Assessor's Manual, Ch VI, pp 1-2.

<sup>6</sup> See *id.* at 276 n 1, quoting 1 State Tax Comm Assessor's Manual, Ch VI, p 4.

established by estimating the future income it could earn.<sup>7</sup> “[T]here are valid variations of each method,”<sup>8</sup> and it is the Tax Tribunal’s duty “to select the approach which provides the most accurate valuation under the circumstances of the individual case.”<sup>9</sup> The Tax Tribunal “is not bound to accept the parties’ theories of valuation. It may accept one theory and reject the other, it may reject both theories, or it may utilize a combination of both in arriving at its determination of true cash value.”<sup>10</sup>

In this case, the Tax Tribunal agreed with Whispering Pines’ position that the income method, rather than the market or cost methods, provided the most accurate valuation in this case. However, Whispering Pines argues that the Tax Tribunal inaccurately applied the income method in two important ways. We will address each in turn.

### C. Use Of Market Data Versus Historical Revenue Figures

Whispering Pines argues that the Tax Tribunal erred in disregarding the actual historical revenue in favor of market data in determining the true cash value of the property, specifically with respect to the green fee revenue estimate.

It is true that the Tax Tribunal relied on Murray’s appraisal data, which used market factors to adjust several figures, including the green fees and the number of rounds expected. However, as explained in *The Appraisal Of Real Estate*: “The income capitalization approach . . . is not an independent system of valuation unrelated to the other approaches. The valuation process as a whole is composed of integrated, interrelated, and inseparable techniques and procedures designed to produce a convincing and reliable estimate of value, usually market value.”<sup>11</sup> In other words, “[t]he analysis of cost and sales data is often an integral part of the income capitalization approach, and capitalization techniques are frequently employed in the cost and sales comparison approaches.”<sup>12</sup> This Court has agreed, holding that, when using the income approach to valuation, adjusting actual income in light of market factors is appropriate if it results in a more reliable indication of the property’s true cash value.<sup>13</sup>

As Murray explained, adjusting Whispering Pines’ actual income figures was necessary in light of the fact that, as both parties acknowledged, the owners were completely inexperienced in operating a golf course and its accompanying facilities. Indeed, Whispering Pines’ own appraiser adjusted the green fee estimate upward to account for an expected improvement in management, although he listed no comparable courses to provide a documented market basis for

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<sup>7</sup> *Id.* at 276-277 n 1, quoting 2 State Tax Comm Assessor’s Manual, Ch X, p 1.

<sup>8</sup> *Id.* at 277 n 1.

<sup>9</sup> *Id.* at 277.

<sup>10</sup> *Great Lakes Div of Nat’l Steel Corp v Ecorse*, 227 Mich App 379, 390-391; 576 NW2d 667 (1998).

<sup>11</sup> *The Appraisal Of Real Estate* (Chicago: Appraisal Institute, 11th ed, 1996), p 449.

<sup>12</sup> *Id.*

<sup>13</sup> See *Wolverine Tower Assoc v Ann Arbor*, 96 Mich App 780, 783; 293 NW2d 669 (1980).

this adjustment. Because adjusting Whispering Pines' actual income figures provided a more reliable indication of the property's true cash value, the Tax Tribunal did not err in accepting Murray's documented, market-adjusted estimates of Whispering Pines' green fees or overall expected income.<sup>14</sup>

#### D. Inclusion Of Golf Cart Rental Revenue

Whispering Pines argues that the Tax Tribunal erred by including golf cart rentals in its calculation of total revenues. Although Whispering Pines included the income generated by the personal property in the restaurant and banquet facilities, it nonetheless argues that because golf carts are personal property, not real property, it is improper to include the income they produce for real property tax assessment purposes. Whispering Pines further argues that its exclusion of golf cart rental income was proper, in light of the fact that it did not deduct the value of the golf carts as personal property. In sum, Whispering Pines suggests that because the income from golf cart rentals is readily isolated, it may be omitted from the income calculations, provided the value of the carts is not deducted elsewhere.

However, we are not convinced that the Tax Tribunal erred in applying the law or adopted an incorrect legal principle by including the golf cart income in its fair market value calculation. This Court has held that, "[i]n assessing the true cash value of a parcel of property, an assessor is to consider the existing use of the land, the income generated by any structures on the land and income generated by any other income-producing use."<sup>15</sup> Moreover, the State Tax Commission Assessor's Manual instructs that, when personal property is used along with real estate to generate income, the proper method of determining the value of only the real estate using the income approach is to "[a]ppraise the entire package, real and personal, and deduct personal from the total package to arrive at real estate value only."<sup>16</sup>

Although neither of these sources specifically addresses golf cart rental income, there appears to be no support for treating it any differently than income derived from other personal property sources. According to the authors of a textbook on golf course appraisal, revenue from golf carts is properly included when performing a real estate appraisal using the income approach to valuation, and is treated as ancillary revenue in the same manner as revenue from food and beverage sales and pro-shop operations.<sup>17</sup> The textbook notes that when valuing a golf course for tax assessment purposes, it is important to segregate the elements of real property, personal property, and intangible property; however, the only one of these components that it indicates is not subject to assessment or taxation is the business enterprise component.<sup>18</sup> The "business

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<sup>14</sup> *Id.*

<sup>15</sup> *Southfield Western, Inc v Southfield*, 146 Mich App 585, 589; 382 NW2d 187 (1985).

<sup>16</sup> State Tax Comm Assessor's Manual, Chapter VIII, p 7.

<sup>17</sup> See Arthur E. Gimmy, MAI and Martin E. Benson, MAI, *Golf Courses and Country Clubs: A Guide To Appraisal, Market Analysis, Development, and Financing* (Chicago: Appraisal Institute, 1992), p 90.

<sup>18</sup> Gimmy, *supra* at 113.

enterprise component” comprises intangible property “such as marketing and management skill, an assembled work force, working capital, trade names,” and similar items.<sup>19</sup>

For further support, the township relies on this Court’s unpublished decision in *Red Run Golf Club v City of Royal Oak*,<sup>20</sup> in which this Court affirmed the Tax Tribunal’s inclusion of cart rental income when valuing a golf course for real property taxation purposes. However, as Whispering Pines observes, neither party challenged the propriety of doing so in that case. Moreover, unpublished opinions of this Court have no persuasive authority.<sup>21</sup> Nonetheless, in light of this Court’s decision in *Southfield Western* and the instructions in the State Tax Assessor’s Manual, there is little doubt that the proper method of valuing a business using the income approach requires taking all income-producing activities into account, then deducting the value of the personal property that generated the income.

In support of the proposition that the income from the golf cart rentals could properly be excluded, Whispering Pines cites the Tax Tribunal case of *Amway Grand Plaza Hotel v City of Grand Rapids*.<sup>22</sup> That case involved a contested tax assessment of an operational hotel. The Tax Tribunal stated:

There is no disagreement that tangible personal property contributes to the value of the going concern, and must be removed to find the residual real property value. Its removal may be either in the form of a calculated net income attributable to the personal property, or by a lump sum deduction from the total value of the going concern.<sup>[23]</sup>

The Tax Tribunal went on to hold that “removal of the true cash value of personal property (or its corresponding reflection of contributory net income) from the going concern is correct methodology in the market valuation of the residual real property.”<sup>24</sup>

In our view, *Amway Grand Plaza* is not in conflict with the Tax Tribunal’s decision here to include golf cart rental in its true market value calculation. Rather, *Amway Grand Plaza* acknowledges that “tangible personal property contributes to the value of the going concern,” indicating that the income it generates should be accounted for in making this calculation. The second step, then, is to remove the value of that property “to find the residual real property value.” *Amway Grand Plaza* endorses two alternative methods for performing this calculation, one of which is to remove the “net income attributable to the personal property,” and the other is

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<sup>19</sup> *Appraisal of Real Estate*, *supra* at 453.

<sup>20</sup> *Red Run Golf Club v City of Royal Oak*, unpublished opinion per curiam of the Court of Appeals, issued July 29, 1997 (Docket No. 184448).

<sup>21</sup> See *Charles Reinhart Co v Winiemko*, 444 Mich 579, 588 n 19; 513 NW2d 773 (1994).

<sup>22</sup> *Amway Grand Plaza Hotel v City of Grand Rapids*, Docket No. 237807, November 26, 2001; 2001 Mich Tax LEXIS 25 (2001).

<sup>23</sup> *Amway Grand Plaza*, *supra* at \*210-211.

<sup>24</sup> *Id.* at \*214-215.



to make a “lump sum deduction from the total value of the going concern,” which is the approach the Tax Tribunal attempted to take in this case. Because our review is limited to whether the Tax Tribunal erred in applying the law or adopted an incorrect legal principle, we need not decide whether it could have utilized the method urged by Whispering Pines, but conclude only that the method it chose was not incorrect.

However, while the Tax Tribunal did not err in including the income from the golf cart rentals in its calculations in estimating the total value of Whispering Pines as a going concern, our review of the record indicates that the Tax Tribunal apparently failed to take the second step, which is to deduct the value of the golf carts (or, in this case, the cost of leasing them, as the record indicates Whispering Pines does not own the carts). This was error.<sup>25</sup> On remand, the Tax Tribunal may include the income generated by the golf carts, but must also account for the cost to Whispering Pines of leasing them.

### III. Adequacy Of The Supporting Evidence

#### A. Standard Of Review

Our review of the Tax Tribunal’s factual findings is limited to deciding whether they are supported by competent, material, and substantial evidence.<sup>26</sup> This requires more than a scintilla of evidence, but less than a preponderance.<sup>27</sup>

#### B. Burden Of Proof

The petitioner has the burden of proof to establish the true cash value of the property.<sup>28</sup> Although the burden of going forward with the evidence may shift during the course of the hearing, the burden of persuasion does not.<sup>29</sup> The Tax Tribunal has the discretion to determine the proper weight to give the evidence.<sup>30</sup>

#### C. Number of Rounds

Whispering Pines’ appraiser, Shaffran, estimated that the course could expect an average of 22,500 rounds a year with improved management. However, Shaffran gave no basis to support this increment of improvement. By contrast, Murray surveyed six comparable courses in

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<sup>25</sup> See State Tax Comm Assessor’s Manual, Chapter VIII, p 7; *Amway Grand Plaza*, *supra* at \*210-211.

<sup>26</sup> *Canterbury Health Care, Inc v Dep’t of Treasury*, 220 Mich App 23, 28; 558 NW2d 444 (1996).

<sup>27</sup> *Id.*

<sup>28</sup> *Great Lakes*, *supra* at 389; MCL 205.737(3).

<sup>29</sup> See *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 354-355; 483 NW2d 416 (1992).

<sup>30</sup> *Teledyne Continental Motors v Muskegon Twp*, 163 Mich App 188, 191; 413 NW2d 700 (1987).

the mid-Michigan area and found that the average annual number of eighteen-hole-equivalent rounds played was over 40,000. Based on a comparison to the course that had the most closely comparable location, Murray then estimated that Whispering Pines could average 31,500, with approximately sixty percent of the rounds being played on weekends. Thus, Whispering Pines could expect to be able to charge its higher weekend rate of \$49 for 18,900 rounds.

Whispering Pines argues that it is impossible to play 18,900 weekend rounds in Michigan, because, assuming the course can accommodate twenty-four people an hour, and assuming that 400 people play per weekend, it would take forty-seven weeks, or eleven months, to do so. From this, Whispering Pines deduces that Murray's surveys of area courses must have yielded erroneous answers, perhaps because the respondents did not understand the concept of an eighteen-hole equivalent game.

A quick bit of multiplication shows that Murray's empirical evidence of the *total* number of golf rounds is not mathematically impossible, even in Michigan: assuming that golf can be played in Michigan from April through October—which is 214 days—and assuming that a course can accommodate six foursomes starting per hour over an eight-hour period, which allows for 192 people—then multiplying 214 days by 192 players yields a total of 41,088 rounds that could be accommodated, a figure well in excess of Murray's 31,500 estimate.

However, using these same assumptions<sup>31</sup> reveals that only 11,520 rounds<sup>32</sup> could be accommodated on weekends, which falls well short of Murray's 18,900 estimate. We note that while the figures underlying the estimate of the likely number of total annual rounds were based on empirical information from other courses, the number of weekend rounds was calculated based on the estimates of employees at various golf courses as to the *estimated ratio* of weekday to weekend rounds rather than actual figures. When questioned about the numbers, Murray conceded that her 60/40 ratio might be "off." We further note that these estimates do not take into account the possibility that poor weather will make golfing impossible on some weekend days during the golfing season—which, in Michigan, is not only possible but well nigh inevitable. We conclude that the estimate of weekend rounds was not supported by competent, material, and substantial evidence<sup>33</sup> and, on remand, instruct the Tax Tribunal to recalculate, with the foregoing concerns in mind, the number of likely weekend rounds Whispering Pines could accommodate in a year, and adjust the final estimate of value accordingly.

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<sup>31</sup> We recognize that Murray's testimony was equivocal regarding whether she accepted these assumptions. She agreed that the figure of 200 players per day on the weekends would be a reasonable estimate, but added "maybe more than that." She also expressed the view that twenty four players per hour is "pretty conservative," and that foursomes are sent off every seven or eight minutes. Even assuming 30 starts per hour, rather than 24, and an average of eight hours of starts per day over the season, this yields 240 players per day, or 480 players per weekend. 480 players times 30 weekends yields only 14,400 rounds. Murray conceded, however, that this volume of players would not be sustained throughout the full April through October season.

<sup>32</sup> That is, 30 weeks times 2 weekend days times 192 people per day.

<sup>33</sup> *Canterbury Health Care, Inc.*, *supra* at 28.

#### D. Green Fees

Shaffran estimated that the annual green fees should total \$675,000, based on a fee of \$30 per round and approximately 22,500 rounds per year. Shaffran did not include the cost of the mandatory cart rental in this figure. This estimate was based in part on the course's historical data as well as the amount Shaffran felt the revenue could be improved by more experienced management. Although Shaffran testified that he considered the rates of other courses in reaching the \$30 figure, he did not list the names or descriptions of any comparable courses in his appraisal.

Murray used figures of \$39 and \$49 for green fees on weekdays and weekends, respectively, which are the fees charged at the most similar of the comparable courses Murray surveyed. Although this amount was higher than the \$22.50 average rate historically charged at Whispering Pines, as noted, it was undisputed that Whispering Pines' managers had no experience in running a golf course, which justifies using market comparisons rather than actual figures to account for improved management.<sup>34</sup> Because Murray's estimate was supported by competent, material, and substantial evidence, the Tax Tribunal did not err in adopting it.<sup>35</sup> However, these were the standard green fees at the course Murray deemed most comparable, and did not account for discounts for seniors, leagues, outings, and twilight play. On remand, the Tribunal should address the propriety of using these figures exclusively, without adjustments for discounted rates.

#### E. Expenses

Murray estimated Whispering Pines' total expenses as \$981,414, which the Tax Tribunal accepted. Whispering Pines argues that this amount is unsubstantiated. Although the amount is not exact, it does fall between the 1998 and 1999 values for operating expenses shown on Whispering Pines' own financial statements. Moreover, as the township notes, Whispering Pines acknowledged in its posthearing brief that this amount was reasonable. Because the financial statements supported this amount, the Tax Tribunal did not err in adopting it.<sup>36</sup> However, we note that on remand, the Tax Tribunal should also include the expense of leasing the golf carts, because, as discussed, it included the income from golf cart rentals in its assessment of Whispering Pines' value.

#### F. Personal Property

The Tax Tribunal set the value of the personal property at \$218,400 for 1998 and \$207,400 for 1999. However, this amount reflected the *assessed* value rather than the *true cash* value, and did not reflect the change Murray made at the hearing in light of the personal property statement Whispering Pines submitted. The Tax Tribunal used Murray's corrected and rounded figures of \$505,600 and \$518,600 elsewhere in the opinion. These figures represent the amount

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<sup>34</sup> See *Wolverine Tower Assoc*, *supra* at 783.

<sup>35</sup> *Canterbury Health Care, Inc*, *supra* at 28.

<sup>36</sup> *Id.*

Whispering Pines reported on its own personal property statements for 1998 and 1999. There is no evidence to support the figures the Tax Tribunal actually used which, as previously indicated, appear to have been used in error. Accordingly, we reverse the Tax Tribunal's judgment and remand for a corrected determination and deduction of the personal property value.

#### G. Transition Expenses

With respect to transition expenses, Whispering Pines argues that a one-time \$230,000 adjustment is justified to allow two years for the expected increased level of income to be reached. Whispering Pines asserts that this adjustment is "no different than an adjustment for curing a physical deficiency," or accounting for the loss in rental value while a new property reaches its stabilized leased occupancy. However, Whispering Pines offers no legal authority to support this proposition. Further, Whispering Pines offers no evidence to support the \$230,000 figure it used, apart from beyond its expert's assumption. At the hearing, Shaffran testified that \$80,000 of this amount represented the expense of undertaking an aggressive advertising and promotions campaign. However, rather than substantiate this amount with evidence, Shaffran merely noted that these items were not free, and he did not think that "attributing \$80,000" for this category of expenses would be "an unheard-of number." Because Whispering Pines offered neither legal nor factual evidence to support this deduction, the Tax Tribunal did not err in failing to incorporate it.

### IV. Independence Of The Tax Tribunal's Determination

#### A. Standard Of Review

As noted, absent fraud, our review of the legal issues underlying a Tax Tribunal decision "is limited to determining whether the tribunal erred in applying the law or adopted a wrong principle."<sup>37</sup>

#### B. Analysis

The Tax Tribunal "has a duty to make its own, independent determination of true cash value."<sup>38</sup> Whispering Pines argues that the Tax Tribunal breached this duty, and correctly observes that even if the Tax Tribunal correctly concludes that a petitioner failed to carry its burden of proof, it "may not automatically accept a respondent's assessment, but must make its own findings of fact and arrive at a legally supportable true cash value."<sup>39</sup> However, in the case on which Whispering Pines relies, the Tax Tribunal "simply accepted respondent's assessment without discussing why the assessment reflected the true cash value of the property."<sup>40</sup> By contrast, in this case, the Tax Tribunal explained, in a lengthy opinion, why Murray's assessment more accurately reflected the property's value. Moreover, the Tax Tribunal did not, in fact,

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<sup>37</sup> *Michigan Bell Telephone Co*, *supra* at 476,

<sup>38</sup> *Great Lakes*, *supra* at 389.

<sup>39</sup> *Jones & Laughlin Steel*, *supra* at 354.

<sup>40</sup> *Id.* at 355-356.

accept Murray's recommended reconciled value for the property, but rather relied on the portion of the assessment that used the income approach with market-adjusted figures. Therefore, we conclude that the Tax Tribunal fulfilled its duty to make an independent assessment of Whispering Pines' true cash value.

## V. Conclusion

The Tax Tribunal properly used and applied the income approach to valuation, and reached an independent conclusion respecting the valuation despite its reliance on the township's appraisal. The Tax Tribunal did not err in including the income from golf cart rentals in its estimate, although it erred in failing to deduct the expense of leasing the carts. The Tax Tribunal's findings respecting the number of possible weekend rounds Whispering Pines could expect, the across-the-board green fees it employed without regard to discounted fees and the figures it used to represent the personal property amount, were not supported by the evidence, and must be recalculated on remand. The remainder of its findings were adequately supported.

Reversed and remanded for further findings consistent with this opinion. We do not retain jurisdiction.

/s/ William C. Whitbeck  
/s/ Helene N. White  
/s/ Pat M. Donofrio